



August 16, 1999

Mr. James D. Goerke
Executive Director
Advisory Commission on State Emergency
Communications
333 Guadalupe Street, Suite 2-212
Austin, Texas 78701-3942

Open Records Decision No. 661

Concerning the required public release under the Public Information Act, chapter 552 of the Government Code, of information on maps used for the provision of 9-1-1 emergency services, and related questions. (ORQ-30)

Dear Mr. Goerke:

You ask several questions concerning the required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code, of certain information pertaining to local governmental entities' provision of emergency 9-1-1 services. You do not ask us to address the required public disclosure of any particular information. Rather, you describe the information and frame your arguments in a general way. We, too, must therefore respond to your questions in similar terms and offer general guidance as to the duty of any local governmental body that receives an open records request for the information you describe. For your questions, you raise a confidentiality provision in the Health and Safety Code, section 771.061(a), and an exception to disclosure in the Act, section 552.110.

You first ask whether address and identity information that local governmental entities use in providing emergency 9-1-1 services and that is obtained from telephone companies or pursuant to non-disclosure agreements with the United States Postal Service ("USPS") is confidential by law.¹ We conclude that such information is confidential pursuant to section 771.061(a) of the Health and Safety Code.

Chapter 772 of the Health and Safety Code authorizes the establishment of local emergency communications districts.² Section 771.061(a) reads in pertinent part as follows:

¹The Public Information Act prohibits the public disclosure of confidential information. Gov't Code § 552.352; *see also id.* § 552.101 (excepting from disclosure confidential information).

²An emergency communication district includes either a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service, or an emergency communication district created under subchapters B, C, or D of chapter 772 of the Health and Safety Code. Health & Safety Code § 771.001(3); *see also id.* § 771.001(7) (defining "public agency").

Information that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service is confidential and is not available for public inspection. Information that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service is confidential and is not available for public inspection.

You assert that this provision makes confidential address and identity information used in providing emergency service that was obtained from telephone companies or from the USPS pursuant to non-disclosure agreements with the USPS. We agree that section 771.061(a) applies to information a telephone company furnished a governmental entity that provides computerized emergency service. A telephone company is a "service provider of telecommunications." *See id.* § 771.001(4) (defining "intrastate long distance provider"), (5) (defining "local exchange service provider"), (12) (defining "wireless service provider"). We also agree that information obtained from the USPS is confidential to the extent such information is contained in a governmental entity's or third party's address database that is used in providing computerized emergency services.³

You also raise section 552.110 of the Government Code for the information a governmental entity obtains from the USPS. You maintain that the ability of local governments to obtain information in the future would be undermined if the local governments cannot honor their commitments to keep information confidential.⁴ Since we have determined that section 771.061(a) applies to information obtained from the USPS that is contained in an address database maintained by a governmental entity, we do not address whether the address information would be excepted from disclosure under section 552.110 of the Government Code.

³You do not indicate that the information about which you ask was furnished by a service supplier to a 9-1-1 emergency communication district on a call-by-call basis. Originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district established under either subchapter B, C, or D of chapter 772 of the Health and Safety Code are confidential pursuant to Health and Safety Code sections 772.118, 772.218, and 772.318, respectively. This office has determined that these confidentiality provisions make confidential the originating telephone numbers and addresses on a city's computed aided dispatch reports of 9-1-1 calls. *See* Open Records Decision No. 649 (1996).

⁴A governmental entity's non-disclosure agreement with the USPS cannot serve as a basis for excepting information from required public disclosure under the Public Information Act. A governmental body may rely on a promise of confidentiality to withhold information from disclosure only if the governmental body has specific statutory authority to make such a promise. *See* Open Records Decision Nos. 444 (1986), 437 (1986). You cite no statutory authority for a governmental entity to enter into a confidentiality agreement with the USPS. Furthermore, information is not confidential under the Public Information Act simply because the party submitting it anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

Next, on behalf of the Deep East Texas Council of Governments ("DETCG"),⁵ you ask whether the DETCG must release address information used in providing 9-1-1 emergency service to Angelina County Judge Joe Berry for the purpose of sending tax notices and voter registration notices. We conclude that the DETCG may, at its discretion, release to Judge Berry information made confidential by section 771.061(a).

Whether a governmental entity may release information to another governmental entity is not a question under the Act. The Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). The question then becomes, we believe, a question of policy. For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Accordingly, the DETCG has the discretion to release to Angelina County Judge Berry the address information used in providing 9-1-1 emergency service.

Finally, you ask three questions about the required public release of certain maps developed for the provision of 9-1-1 emergency services in rural counties ("9-1-1 maps"). You first ask about the confidentiality of certain data on the 9-1-1 maps. Second, with regard to the 9-1-1 maps in their entirety, you ask about the applicability of section 552.110 of the Government Code, which excepts from required public disclosure certain confidential commercial or financial information. Third, you ask about the applicability of section 552.231 of the Government Code, which concerns procedures for responding to requests for information that require programming or manipulation of data, to a request for a 9-1-1 map.

You explain that a 9-1-1 map developed in conjunction with a county rural addressing project for emergency services is a picture of the data a county maintains concerning a

⁵We assume that the DETCG is a governmental entity that furnishes computerized emergency services. *See* Health & Safety Code § 771.001(3) (defining "emergency communication district").

particular geographic area.⁶ The creation of a 9-1-1 map, you state, begins with a map of the road network of the particular area. This base map may be obtained from a private mapping vendor, a public utility, the Texas Department of Information Resources, or from a combination of these sources. To this base map is added "attribute data," such as structure locations, road names, and the identification of political boundaries. You inform us that the customer location information on these maps may be obtained from the USPS, a local government, telephone companies, an electric, gas or water utility,⁷ county appraisal district, public school district, or other public entity. You state that the 9-1-1 map may be used in several ways in addition to providing emergency service, for example, "local and regional planning, surveying, engineering, automatic vehicle location, transportation, flood control, hazardous materials control, delivery services (including postal delivery), utility services, agriculture, forestry and census enumeration." You explain that the map is used in the provision of 9-1-1 services in "the delivery of emergency services to a caller['s] or callers [sic] location; the identification of geographic areas for the proper routing of 9-1-1 calls; [and] the delivery of a wireless caller's location."

You ask about the confidentiality of map data that a local government that provides 9-1-1 service obtained from a telephone company or the USPS. In our opinion, map information that a service provider furnished a local government for the purposes of providing computerized 9-1-1 service that is incorporated into a map is confidential under section 771.061(a). The legislative intent to keep confidential information a governmental entity obtains from a telecommunications service provider for such purposes is plainly manifest in the language of the statute and must be given effect even when the information exists in a map. The statute contains no limitation on the confidentiality it imposes that would indicate that the legislature intended the information to be public if it is placed on a map a governmental body uses in providing emergency services. The language is not susceptible of such a construction and to do so would thwart the legislative intent and purpose of the provision. Moreover, this intent to protect the information is echoed in other statutes concerning the confidentiality of address information governmental entities obtain from

⁶You state that a county may also maintain the data in a tabular format that is separate from the 9-1-1 map.

⁷Section 182.052(a) of the Utilities Code prohibits a government-operated utility from disclosing personal information in a customer's account record if the customer requests that the government-operated utility keep the information confidential. Util. Code § 182.052(a); *see* Open Records Decision No. 625 (1994). "Personal information" means an individual's address, telephone number or social security number. Util. Code § 182.051. Section 182.052(a) does not prohibit a government-operated utility from disclosing personal information to an official or employee of a political subdivision of the state in an official capacity. *Id.* § 182.054(1); *see* Open Records Decision No. 625 at 7 (1994). This office has not addressed the confidentiality of customer personal information that has been transferred to a political subdivision of the state, such as a governmental entity that provides emergency services. Generally, if the agency to which confidential information is transferred is authorized to receive the information, the information remains confidential once it is transferred. *See* Open Records Decision Nos. 516 (1989), 490 (1988).

telecommunication service providers in providing emergency services. See Health & Safety Code §§ 772.118, .218, .318 (protecting originating telephone numbers and addresses furnished on call-by-call basis by service supplier to 9-1-1 emergency communication districts established under subchapters B, C, and D of chapter 772 of Health and Safety Code).

Similarly, we believe that information in an address database of a governmental entity or a third party obtained from the USPS for use in providing computerized 9-1-1 service and which appears on a map used in providing emergency services is confidential pursuant to section 771.061(a). Again, the language clearly reveals the legislative intent to protect without limitation address database information used in responding to emergency calls for assistance. We cannot frustrate that intent by construing the statute to remove the confidentiality when such addresses are found on a map, which is essentially a picture of the address database.

As for the required public release of the maps in their entirety, you raise section 552.110 of the Government Code. Section 552.110 provides in relevant part that "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision is excepted" from disclosure. In determining the confidentiality of commercial or financial information under section 552.110 as it now reads, this office announced that we would follow the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). See Open Records Decision No. 639 (1996). However, this interpretation is inconsistent with a case recently decided by the Third District Court of Appeals, in *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex.App.--Austin 1999, no pet.h.). That decision states:

We reject the *National Parks* rationale. Section 552.110 is certain and clear in its reference to information made confidential or privileged by statute or judicial decision. Appellees' contention that *National Parks* is a judicial decision within the meaning of section 552.110 is without merit in our view.

Birnbaum 994 S.W.2d at 784. Thus, at this time, in order for information to be withheld under the commercial or financial information prong of section 552.110, the information at issue must be shown to be protected by a specific statute or judicial decision. In this case, you have not made such a showing.

However, the Seventy-sixth Legislature recently passed Senate Bill 1851, which amends section 552.110. Act of May 25, 1999, 76th Leg., R.S., S.B. 1851, § 7 (to be codified at Gov't Code § 552.110). Section 7 of Senate Bill 1851 amends section 552.110 to read in relevant part as follows:

(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial

competitive harm to the person from whom the information was obtained is excepted from [required public disclosure].

Act of May 25, 1999, 76th Leg., R.S., S.B. 1851, § 7 (to be codified at Gov't Code § 552.110). Thus, under the amended version of section 552.110, which takes effect September 1, 1999, a business enterprise must show by specific factual evidence that the release of information would cause it substantial competitive harm. *See id.* Consequently, this office will determine the applicability of section 552.110 to any particular map on a case-by-case basis.

Having determined that the maps about which you ask may contain confidential section 771.061(a) information, we turn to your questions concerning the cost of providing the maps with the confidential information redacted. You suggest that the removal of the confidential information from a map before its release would be very time-consuming and cost prohibitive. You ask whether, in situations in which a governmental entity does not have available a map without the confidential information, a governmental body may, pursuant to Government Code section 552.231, obtain the agreement of the requestor to accept a redacted version of the map under the governmental entity's cost and time parameters.

Section 552.231 of the Government Code applies to situations in which responding to a request for information requires programming or manipulation of electronic data on a computer. The provision reads as follows:

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the General Services Commission under Section 552.262; and

(5) a statement of the anticipated time required to provide the information in the requested form.

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional 10 days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of receipt of the request, that the additional time is needed.

(d) On providing the written statement to the requestor as required by this section, the governmental body does not have any further obligation to provide the information in the requested form or in the form in which it is available until the requestor states in writing to the governmental body that the requestor:

(1) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the governmental body agree; or

(2) wants the information in the form in which it is available.

(e) The officer for public information of a governmental body shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A governmental body shall maintain a file containing all written statements issued under this section in a readily accessible location.

Section 552.231 envisions a preliminary interchange between the governmental body and the requestor in situations in which responding to a request for information requires data manipulation or programming that imposes somewhat of a hardship on the governmental body in terms of either feasibility, interference with government operations, or additional programming costs. A governmental body may not avail itself of this provision, we believe,

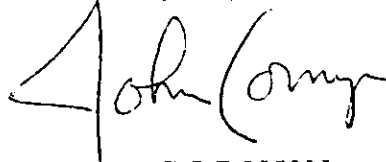
when responding to a request merely requires a time-consuming redaction of information.⁸ Thus, should a governmental entity that provides emergency services receive a request for a 9-1-1 map and such entity determines that the redaction of confidential information in the map requires data programming or manipulation that would impose one of the statute's hardships, that entity may engage in the interchange the statute envisions, including reaching an agreement with the requestor as to the cost, time, and other terms for the release of the map, before preparing to respond to the request.

S U M M A R Y

Section 771.061(a) of the Health and Safety Code makes confidential certain information telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. Such information is also confidential when included in maps used by a governmental entity in the provision of emergency services. The applicability of section 552.110 of the Government Code to a map used by a governmental entity in the provision of emergency services must be determined on a case-by-case basis. The Deep East Texas Council of Governments has discretion to release information made confidential by section 771.061(a) to a county judge for the purpose of sending tax notices or voter registration notices. Section 552.231 of the Government Code enables a governmental body and a requestor to reach an agreement as to the cost, time, and other terms of responding to a request for information in certain situations that require the governmental body to program or manipulate electronic data.

⁸The rules of the General Services Commission concerning costs of providing public information permit governmental bodies subject to those rules to recover the costs of personnel time spent in blacking out confidential information in order to release the public information. 1 T.A.C. § 111.63(d)(4); *see also* Gov't Code § 552.261. Additionally, an officer for public information may require a deposit or bond for payment of anticipated costs if the estimated charge for the information exceeds \$100. Gov't Code § 552.263(a).

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn". The signature is fluid and cursive, with the first name "John" and last name "Cornyn" clearly distinguishable.

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